

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
SOUTHERN CALIFORNIA EDISON
COMPANY (U 338-E) for Authority to Lease
Available Land on the Barre-Villa Park
Transmission Right-of-Way to Walt Disney
Parks & Resorts, U.S., Inc., a Florida
Corporation.

Application 13-05-004
(Filed May 1, 2013)

**DECISION GRANTING APPROVAL UNDER PUBLIC UTILITIES CODE
SECTION 851 FOR CONVEYANCE OF A LEASE BY
SOUTHERN CALIFORNIA EDISON COMPANY TO
WALT DISNEY PARKS & RESORTS, U.S., INC.**

1. Summary

This decision takes the following actions:

- Grants the unopposed application¹ of Southern California Edison Company (SCE) for Commission authorization under Section 851² for SCE to convey a 20-year lease of property³ located on SCE's Barre-Villa Park Transmission

¹ The application was filed on May 1, 2013. In Resolution ALJ 176-3315, dated May 23, 2013, we preliminarily categorized this proceeding as ratesetting and preliminarily determined that a hearing was necessary. However, no protests to the application were filed, and we have granted similar conveyances. Accordingly, no hearing was held.

² All statutory references are to the Public Utilities Code unless otherwise referenced.

³ The initial term of the lease is twenty (20) years, beginning on the date that Walt Disney Parks & Resorts, U.S., Inc. (DISNEY) exercises the option. DISNEY may renew the lease for two (2) additional twenty (20) year terms.

right-of-way (ROW) in the City of Anaheim to DISNEY. DISNEY initially plans to utilize the site for landscaping and vehicle and pedestrian access. Eventually, DISNEY plans to install roads and parking ramps on the site to connect with its planned parking structure which will be situated north of the site.

- As a condition of approval of this application, requires SCE to apply for prior Commission authorization pursuant to Section 851 and to undergo any required California Environmental Quality Act review if DISNEY decides to utilize the property for another purpose;
- As a condition of approval of this application, requires SCE to obtain prior Commission authorization pursuant to Section 851 for any proposed assignment, transfer, sublease or conveyance or encumbrance of the lease by DISNEY that would alter the terms of the existing lease.
- No estimated costs are foreseen. As a result of entering into this proposed lease, SCE will obtain substantial revenues from rent paid by DISNEY. This lease will also benefit SCE ratepayers, because the rent paid by DISNEY will be treated as Other Operating Revenue for ratemaking purposes, and SCE ratepayers will be credited with 30 percent of the rent revenues in excess of the annual threshold.

2. Background

2.1. The Parties

Southern California Edison Company (SCE) is an electric public utility organized under the laws of the State of California, which engages in the business of electric generation, transmission, and distribution. As a public utility, SCE is subject to Commission regulation.

Walt Disney Parks & Resorts, U.S., Inc. (DISNEY) is a Florida corporation founded in 1971 as Walt Disney Attractions when the Walt Disney World Resort in Florida opened. DISNEY currently owns and operates the Walt Disney World

Resort in Florida, the Disneyland Resort in California, Disney Vacation Club, Disney Cruise Line and ESPN Zone facilities. DISNEY also manages Disneyland Resort Paris and Hong Kong Disneyland Resort and licenses the operations of the Tokyo Disney Resort in Japan. It also designs and develops new theme park concepts, attractions and resort properties.

2.2. The Project

SCE proposes to lease to DISNEY 5.67 acres located on a portion of SCE's Barre-Villa Park Row in The City of Anaheim (Anaheim). The lease site (site) is bounded on the west by Harbor Boulevard, on the south by Disney Way, on the north by fee parcels, the largest of which is owned by DISNEY, and on the east by the Interstate 5. SCE owns and operates above-ground transmission lines on the site. Otherwise, the site is vacant.

SCE represents that the proposed lease will not interfere with SCE's operation of its transmission lines on the site or with its service to customers.

2.3. The Proposed Agreement Between SCE and DISNEY

SCE and DISNEY have executed an Option to Lease and Lease Agreement dated October 11, 2011 (the Agreement). Under the Agreement, Disney will have an initial lease term of ten years and pay base rent of \$114,540 in years 1 through 5 and \$126,000 in years 6 through 10.⁴ Under the Agreement, DISNEY also will have the option, on two occasions, to extend the lease term – each time for an additional twenty year period. If DISNEY exercises the option to extend,

⁴ Initial base rental will be adjusted upward to the annual amounts shown in the second following chart should Disney complete installment of a parking structure prior to the expiration of the initial ten year term.

the base rent will be adjusted upward to reflect the fair market value on the open market (excluding any improvements made by DISNEY).

DISNEY plans to use the site for storage, installation and maintenance of landscaping, operation and use of security fences, construction , maintenance and operation of parking lots, roads, storage facilities, landscape setbacks, irrigation and/or lighting systems, access, temporary construction laydown and/or storage of equipment, and any other purposes permitted by law with SCE's prior written consent.

The initial term of the proposed lease is 20 years and may be renewed for two additional 20-year terms. For the first 10 years of the lease, DISNEY will pay an annual total of the following amounts to SCE as rent:

Years	Rent
Years 1 through 5	\$114,540
Years 6 through 10	\$126,00

However, the rent in years 1 through 10 shown above shall be adjusted upon the first to occur of (1) issuance of certificates of occupancy or use to DISNEY for its proposed parking and parking ramps plan, or (2) upon reaching the 11th year of the lease. Upon adjustment, DISNEY will pay the following adjusted amounts to SCE during years 1 through 10 and subsequent years as rent:

Years	Rent
Years 1 through 5	\$450,000
Years 6 through 10	\$495,000
Years 11 through 15	\$544,500
Years 16 through 20	\$598,950

If DISNEY exercises its extension option, the base rent shall be further adjusted upon expiration of the 20th year of the base term, based on the then current fair market rental value of the site. However, the adjusted rent shall not

be less than the base rent otherwise payable immediately before the adjustment or greater than the base rent otherwise payable immediately before the adjustment increased by five percent (5%) compounded annually for five years.

The Agreement provides that DISNEY's activities must not interfere with the operation of the electric facilities that cross the site. For instance, any equipment used by DISNEY on or adjacent to the site must be used and operated to maintain a minimum clearance of twenty-one (21) feet from all overhead electrical conductors. DISNEY must also maintain a minimum twenty-five (25) foot radius around all tower leg foundations and all 220 kilovolt tubular steel pole foundations and a ten (10) foot radius around all steel poles, wood poles and anchors.

SCE remains responsible for all real property taxes assessed against the site by the State Board of Equalization. SCE also reserves the right to enter the site as necessary to inspect, to maintain, replace, alter or make improvements to its equipment and facilities located at the site. DISNEY is therefore obligated to provide and maintain access roads on the site that are at least sixteen (16) feet wide and capable of supporting a gross load of forty (40) tons on a three-axle vehicle.

DISNEY is responsible for all personal property taxes, general or special assessments or fees levied against the site, and for improvements thereon. DISNEY must maintain any insurance required for its uses of the site and agrees to indemnify SCE against liability for damage or injury to persons on the site, except to the extent injury is caused by SCE's negligent or willful misconduct.

2.3.1. Best Secondary Use and Valuation of Site

SCE recognizes that secondary land uses of the site are limited by height clearances and other restrictions because above ground transmission lines cross

the site. SCE determined that the proximity of the site to Disneyland and the land uses allowed by Anaheim made leasing the site to DISNEY compatible with SCE's objectives of providing revenue to its ratepayers and shareholders while safeguarding its obligation to maintain the safety and reliability of its facilities. To evaluate the lease value for the site, SCE obtained a market analysis of the value of the site as though vacant and unimproved. According to SCE, the revenue that SCE will receive from DISNEY falls within the acceptable market range and was determined using similar methodologies to those used in those transactions approved by the Commission in Decision (D.) 05-06-045, D.04-09-018 and D.03-01-083.

2.4. Environmental Review

The California Environmental Quality Act (CEQA)⁵ applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to "inform governmental decision-makers and the public about the potential significant environmental effects of the proposed activities."⁶

Anaheim is the Lead Agency for CEQA review of The Disneyland Resort Specific Plan, which details DISNEY's proposed uses of the site. Anaheim certified the final Environmental Impact Report.⁷ However, according to SCE, the site will require final site plan approval by the Anaheim Planning

⁵ Public Resources Code Section 21000, *et seq.*

⁶ Title 14 of the California Code of Regulations (hereafter, CEQA Guidelines), Section 15002.

⁷ The City of Anaheim certified the Final Environmental Impact Report (FEIR), No. 311 (State Clearinghouse No.91051055) on June 22, 1993 in its Resolution 93R-107. Addenda to the FEIR were approved by Anaheim on October 8, 1996 in its Resolution 96R-176.

Commission per The Disneyland Resort Specific plan, because of planned construction of a parking structure on property north of the site.⁸ The Commission is a Responsible Agency for the project. CEQA requires the Commission to consider the Lead Agency's environmental documents and findings before acting upon or approving the project.⁹ SCE's application includes the following environmental documents prepared by Anaheim:

- Final Environmental Impact Report (FEIR), No. 311 (State Clearinghouse No. 91051055) and Addendum certified on June 22, 1993;
- Exhibit C - Electromagnetic Field (EMF) Information;
- Addendum to FEIR approved by City of Anaheim in Resolution 96R-176 dated October 8, 1996.

As the Responsible Agency, the Commission has reviewed Anaheim's environmental documents and finds them adequate for our decision-making purposes. We also find that Anaheim reasonably concluded that the planned uses of the site will not have a significant adverse impact on the environment and that no mitigation measures are required.

Accordingly, we adopt Anaheim's environmental documents for purposes of our approval of the conveyance.

2.5. Ratemaking Considerations

SCE proposes to treat revenue from the proposed lease as other operating revenue (OOR).

⁸ If the changes proposed at the time of final site plan approval differ significantly from the project described by the FEIR, there may be need for additional environmental review under CEQA.

⁹ CEQA Guidelines, Section 15050(b). The specific activities that must be conducted by a Responsible Agency are contained in CEQA Guidelines, Section 15096.

On January 30, 1998, SCE filed Advice Letter 1286-E, which sets forth categories of non-tariffed products and services offered for sale by SCE and describes the products and services within each category. This advice filing was made pursuant to Rule VII.F of the Affiliate Transaction Rules contained in Appendix A of Decision (D.) 97-12-088 as subsequently modified by various decisions, included D.06-12-029. On April 5, 2000, pursuant to Commission Resolution E-3639, SCE filed Advice Letter 1286-E-A, which provides the current list of its non-tariffed products and services categories. Attachment B to Advice 1286-E-A identified the *Secondary Use of Transmission Right of Ways and Land* and the *Secondary Use of Distribution Right of Ways, Land, Facilities and Substations* as categories of existing non-tariffed products and services.

In D.99-09-070, the Commission adopted a gross revenue sharing mechanism for certain of SCE's other operating revenues. The adopted gross revenue sharing mechanism applies to OOR, except for revenues that: (1) derive from tariffs, fees or charges established by the Commission or Federal Energy Regulatory Commission, (2) are subject to other established ratemaking procedures or mechanisms, or (3) are subject to the Demand-Side Management Balancing Account. Under the gross revenue sharing mechanism, all applicable gross revenues recorded from non-tariffed products and services subject to the mechanism will be split between shareholders and ratepayers after the Commission-adopted annual threshold level of OOR has been set. For those non-tariffed products and services deemed "active" by the Commission, revenues in excess of the annual threshold will be split between shareholders and ratepayers on a 90%/10% basis. For those non-tariffed products and services deemed "passive" by the Commission, the revenues in excess of the annual

threshold will be split between shareholders and ratepayers on a 70%/30% basis.¹⁰

SCE products or services offered under the Secondary Use of Transmission Right of Ways and Land and the Secondary Use of Distribution Right of Ways, Land, Facilities and Substations have been deemed “passive” for revenue sharing purposes. Therefore, the revenue from the proposed lease with Disney will be treated as “passive,” so that any lease revenues which exceed the annual threshold would be allocated between shareholders and ratepayers on a 70%/30% basis.

3. Discussion

Section 851 provides that no public utility shall sell, lease, mortgage, or otherwise encumber the whole or any part of property necessary or useful in the performance of its duties to the public, without first having obtained Commission approval.¹¹

¹⁰ Under the settlement approved in D.99-09-070, an existing product or service is classified as “active” if it involves a total incremental shareholder investment of \$225,000 or more, either on a one-time basis or within a 12-month period. An existing product or service is classified as “passive” if it involves a total incremental shareholder investment of less than \$225,000. “Incremental shareholder investment” includes capital-related costs and expenses. Capital-related costs, labor and other expenses properly charged to the utility shall not be included in calculating the \$225,000 threshold.

Each new category of products or services is presumed to be “passive.” To reclassify an existing product or service as “active,” or a new product or service as “active,” SCE must file an advice letter which shows that the product or service involves incremental shareholder investment of at least \$225,000 either on a one-time basis or within a 12-month period. SCE may file only up to four advice letters per year for this purpose. If no protests to the advice letter are filed, the change in classification becomes effective on the 31st day after the filing of the advice letter.

¹¹ Section 851 states in pertinent part:

Footnote continued on next page

The primary question for the Commission in Section 851 proceedings is whether the proposed transaction is not adverse to the public interest. The public interest is served when utility property is used for other productive purposes without interfering with the utility's operations or affecting service to utility customers.¹² In reviewing a Section 851 application, the Commission may "take such action, as a condition to the transfer, as the public interest may require."¹³

We find that SCE's proposed lease with Disney is in the public interest. The proposed lease will not interfere with SCE's use of the site or with service to SCE customers, and the site will be utilized safely and in a manner consistent with legal and regulatory requirements. The terms of the agreement between SCE and Disney are reasonable and do not subject SCE to an undue risk of liability that could affect SCE's ability to provide utility service to the public. SCE's entry into the lease with Disney will generate substantial OOR for the benefit of ratepayers and will permit the productive use of the site, without interfering with SCE's existing transmission facilities.

The Agreement permits DISNEY to assign, transfer, sublease, convey or encumber the lease, with prior written consent of SCE. However, we

No public utility...shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its ... property necessary or useful in the performance of its duties to the public ... without first having either secured an order from the Commission authorizing it to do so for qualified transactions valued above five million dollars (\$5,000,000) or for qualified transactions valued at five million dollars (\$5,000,000) or less, filed an advice letter and obtained a resolution from the Commission authorizing it do to so.

¹² D.00-07-010 at 6.

additionally require SCE to apply for Commission authorization under Section 851 for any proposed assignment, transfer, sublease or conveyance or encumbrance of the lease by DISNEY that would alter the terms of the existing Agreement to ensure that such transaction complies with Section 851, as well as CEQA.

We approve of the proposed ratemaking treatment for the compensation that DISNEY will pay to SCE under the lease. The treatment of this compensation as OOR and of the lease as a “passive” source of revenue for the purposes of allocation between shareholders and ratepayers is consistent with prior Commission decisions and our current policy.

4. Conclusion

For all of the foregoing reasons, we grant the application of SCE pursuant to Section 851, subject to the ordering paragraphs which follow, effective immediately.

5. Final Categorization

Based on our review of this application, we conclude that the preliminary determination made in Resolution ALJ 176-3315 (May 13, 2013) that this proceeding should be categorized as ratesetting, is appropriate. However, because the application of SCE is unopposed, we find that no hearing is necessary.

6. Waiver of Comment Period

This matter is unopposed. Accordingly, the proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in

¹³ D.3320, 10 CRRC 56, 63.

accordance with Section 311 of the Public Utilities Code and Rule 14.2(a) of the Commission's Rules of Practice and Procedure without necessity of public comment.

7. Assignment of Proceeding

Carla J. Peterman is the assigned Commissioner and Patricia B. Miles is the assigned ALJ in this proceeding.

Findings of Fact

1. The proposed lease agreement will not interfere with SCE's use of its facilities on the site or interfere with service to SCE customers. The site will be utilized safely and in a manner consistent with Commission and legal requirements.
2. Anaheim is the Lead Agency for DISNEY's proposed plan under CEQA.
3. The Commission is a Responsible Agency for the purposes of environmental review of the proposed lease agreement under CEQA.
4. Rent received by SCE from DISNEY under the lease will be treated as OOR from a "passive" revenue source and will be allocated among shareholders and ratepayers on a 70%/30% basis pursuant to D.99-09-070.
5. The proposed lease will generate substantial lease revenues for the benefit of SCE ratepayers.
6. The proposed lease will allow productive use of the site without interfering with SCE's existing use of the site for its transmission facilities.

Conclusions of Law

1. Under Section 851, a regulated utility must obtain prior Commission authorization before entering into a lease of utility property that is used or useful in serving the public.

2. Under Section 851, the Commission must review a proposed lease of utility property that is used or useful in serving the public to determine if the proposed lease is not adverse to the public interest.

3. The public interest is served when utility property is used for other productive purposes without interfering with the utility's obligation to maintain the safety and reliability of its operations and service to utility customers.

4. The Commission has reviewed Anaheim's Final Environmental Impact Report and environmental documents and finds them adequate for our decision-making purposes under CEQA.

5. The Commission finds that Anaheim reasonably concluded that SCE's lease of its Barre-Villa Park Transmission to DISNEY, and DISNEY's plans to utilize the site for landscaping, vehicle and pedestrian access and installation of roads and parking ramps will not have significant adverse effects on the environment, and therefore, requires no mitigation measures.

6. Consistent with Section 851, SCE's conveyance of the lease to DISNEY will serve the public interest and should be approved as consistent with the below Order.

7. Hearings are not necessary

8. Application 13-05-004 should be closed

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company (SCE) is authorized pursuant to Public Utilities Code Section 851 to convey to Walt Disney Parks & Resorts, U.S., Inc., a lease of 5.67 acres of land located on a portion of SCE's Barre-Villa Park

transmission right-of-way located in the City of Anaheim, as described in the application.

2. Southern California Edison Company shall treat compensation received from Walt Disney Parks & Resorts, U.S., Inc. under the lease as Other Operating Revenue received from a “passive” revenue source pursuant to Decision 99-09-070 and, once the annual threshold of gross revenues has been met, shall allocate revenue between shareholders and ratepayers on a 70%/30% basis, unless directed otherwise in a future Commission order.

3. Southern California Edison Company shall seek advance Commission approval of any proposed assignment, transfer, sublease, conveyance, or encumbrance of the lease that would alter the lease terms or change the use of the site from the purposes for which the lease was granted to Walt Disney Parks & Resorts, U.S., Inc.

4. If Walt Disney Parks & Resorts, U.S., Inc. wishes to utilize the site for any purposes other than the uses analyzed in the environmental documents prepared by the City of Anaheim and relied upon by the Commission in this decision, and Southern California Edison Company wishes to permit such use, Southern California Edison Company shall first apply for Commission authorization pursuant to Public Utilities Code Section 851, undergo any required environmental review, and apply for any required local approvals.

5. Southern California Edison Company shall amend its Agreement and any subsequent lease with Walt Disney Parks & Resorts, U.S., Inc. to include this requirement.

6. Hearings are not necessary.

7. Application 13-05-004 is closed.

This order is effective today.

Dated _____, at San Francisco, California.